Funds used in financing . . .

Continued from page 3

part of a basic move toward integrating the pension fund into the corporate finance area of the company.

"There are more sophisticated tools for integrating the corporation's financial statement with the pension fund's financial statement," said Mr. Eager of Meidinger. Actuarial firms such as his are doing new modeling work in that area.

"Generally, the trend is healthy, positive," Mr. Eager said. "It's an area of financing a business that has not had sufficient attention paid to it."

Almost all of those interviewed pointed to this new attention being showered on the pension area. Employee benefits are "becoming an integrated part of the corporate finance realm," said Mr. Salisbury of EBRI.

Gary Pines, senior vice president at Meidinger, said the financial executives at corporations now ask, "What does the pension fund mean to the profit and loss of the company?"

Until the funds' assets and investment returns began to climb steadily only a few years ago, Mr. Pines noted, "it was peanuts."

Mr. Rotenberg of Buck Consulting said corporate financial officers see stock and bond contributions as a means of "warehousing" securities, perhaps helping to maintain a certain debt/equity ratio or keeping a certain number of shares outstanding. In addition, the corporation might be able to reduce underwriting costs and create marketability for its shares: "get them into the public's hands very quickly, a quick float in the marketplace," he said.

In addition, there is the continuing debate over whether pension assets belong to the plan participants or to the corporation.

Mike Gordon, an attorney who helped draft ERISA, said there is a "fundamental philosophy" among many corporate executives that says the "assets belong to the corporation, not to the employees. It's as much a question of corporate ethics as law."

One consultant, who asked not to be identified, said the increased use of pension assets by corporations "is a very bad trend because the primary purpose of the pension plan is to provide benefits for retirees," not to aid the company.

Some experts note part of the increase may also be due to the action, or lack of action, taken by the Department of Labor and the Internal Revenue Service and the lack of public scrutiny of the situation.

"There is no public pressure, no media outcry, that says it is socially irresponsible to get into this business" of terminating plans to accomplish corporate goals, Mr. Salisbury commented. "The environment you'd want to do things like that in is the environment we're in now."

Ms. Pollack, the corporate attorney who works on terminations and reversions, said the Labor Department has, for example, taken the position that terminations are a management decision, not a fiduciary one, and case law during the past year has supported that.

Mr. Thomas, from the House Select Committee on Aging, said the department "is not doing its job. Why should management stop if the enforcement agencies don't care? It has become clear to Wall Street, the corporate attorneys and the consultants that the DOL is incapable or unwilling to act."

Mr. Rotenberg suggested the Pension Benefit Guaranty Corp. should be more interested in stock and bond contributions when "companies on a downslide put securities into an (underfunded) plan."

Several attorneys said they believe the Labor Department should be more aggressive.

"If I were at the DOL, I'd take the hardest line possible, and if the courts loosen it up, fine," said Ian Lanoff, former administrator of the department's Pension and Welfare Benefits Program.

Messrs. Thomas and Gordon added that the lack of strong action by the department except in extreme cases will make it harder to pass the remedial legislation they believe is necessary to close up loopholes in ERISA that allow these corporate maneuvers.

Provisions within ERISA for terminations and reversions, for example, were conceived because the framers of the law thought the excess assets would be the result of actuarial errors, Mr. Thomas said.

"I don't think anybody foresaw the deliberate stamping out of a defined benefit plan . . . for manipulative takeover reasons. Nobody thought they'd try to replace a defined benefit plan with those jerky ESOPs," he added.

Naturally, opinions vary widely on whether the use of pension assets by the corporation is good or bad.

Mr. Rotenberg of Buck said: "If the company is a viable company, I have no problem if it has an immediate cash-flow problem" and solves it by contributing stocks or bonds, whose value can be ascertained.

"A company with no place to go, in its last throes of existence, I have a problem with that."

What disturbs him most is that stock contributions began with "strong, institutional companies" who took a "reasonable concept with a lot of thought and a lot of help from the marketplace. Now, it's being done by weaker companies, some on the verge of bankruptcy."

Mr. Pines, from Meidinger, said he could envision recommending a company terminate its plans and recapture the excess assets. However, he sees an alternative that apparently no one has tried.

He suggested a company create a new plan. In one plan would be the excess assets and the retired lives; in the second would be the active participants. The company then would terminate the first plan, purchasing annuities for the retired lives and making use of the excess assets. The other plan, for active participants, would continue.

Don Grubbs, a consultant and actuary at Buck Consultants, believes the corporation has the right to take the excess assets. One way to avoid termination would be to reduce contributions and save money on a year-to-year basis, he said. He added he is indifferent to the use of pension assets as a corporate finance tool "as long as it's a small portion of the assets." Termination, however, "is an undesirable, inadvisable thing to do in most circumstances," Mr. Grubbs said.

The consultant who requested anonymity views terminations/reversions as "dreadful, like a pre-ERISA riverboat gambler . . . a signal to banks, the government, unions, etc. that the company is in trouble. To me it's an even more desperate situation" than non-cash contributions.

"This is all a very bad sign for the private pension industry," he added.

Messrs. Thomas and Gordon were the most vocal opponents of the practices.

"Corporate management in the most dire way is using plan assets and emasculating ERISA," Mr. Thomas said. "These are only minor permutations of what Congress found repugnant."

Continued on next page

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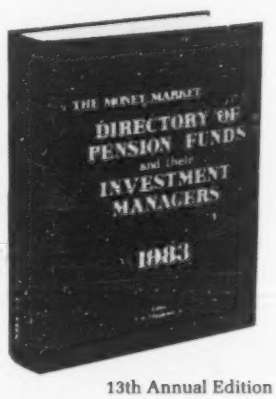

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Macmillan . . .

Continued from page 1
small degree along with their clients.

The New York investment advisory firm on June 6 sold a 1,007,000-share block in the open market, receiving $36 per share. Beverly Chell, assistant general counsel for Macmillan, said that as a result of the sale, "I believe that the suit will be dismissed voluntarily by Macmillan." As of presstime, however, it was still effective.

Alan Greene, managing partner for David J. Greene, said the firm bought the shares because it viewed Macmillan as a good investment in an under-valued stock, and sold the shares because it decided to reap the profit from the price appreciation. He said the firm did not feel pressured to sell the shares.

Mr. Greene said the firm purchased the shares that were sold for an average price of $13 over the course of three years.

At the time the suit was filed, the investment advisory firm held about 11.3% of the 9.43 million shares outstanding.

According to the suit, 999,156 shares of the holdings were in discretionary taxable and tax-exempt customers' accounts. The remaining shares were held by principals of David J. Greene or their relatives.

The firm has $637 million under management, of which $471 million is tax-exempt.

Mr. Greene dismissed the suit as baseless and a tactic "to pressure our clients to sell their Macmillan stock."

He said Macmillan personally contacted David J. Greene's clients, "in effect threatening (them) with a lawsuit if they didn't sell their stock."

Macmillan's suit acknowledges it contacted clients, including CPC International Inc. for which David J. Greene manages tax-exempt assets.

Documents filed with the suit contain an in-house note concerning CPC's ownership of Macmillan stock, in which an unidentified associate advised Walter Volpi, Macmillan's counsel, "I spoke with Mr. Short, the (CPC) general counsel. I asked their position on the suit and he indicated that it was Greene's problem. I disabused him of that and tried out the ERISA arguments on him."

Macmillan has not been the object of any takeover attempts, according to one analyst. However, he indicated the firm might be sensitive about anyone holding a large share in it because it has just begun to turn around after a reorganization under new management.

Macmillan's suit, filed April 28 in U.S. District Court in New York, charges the investment management firm, on behalf of clients and principals, accumulated the shares "to manipulate its price and/or peddle the accumulated shares as a block at a premium to someone who wanted to take over Macmillan."

The suit alleges the firm hid its intention behind its clients.

"Greene also improperly used the assets of its discretionary account customers to purchase Macmillan stock, thereby leveraging Greene's own position by using customer funds, and then warehoused that stock in their accounts until Greene deemed that the time was ripe to reveal its true intentions," the suit states.

The suit charges that by "purchasing the stock slowly and warehousing much of it in the accounts of certain of its discretionary account customers, Greene sought to avoid detection of the conspiracy and prevent any increase in the price of Macmillan stock due to (its own) purchases." The suit says this might constitute a violation of ERISA, which the firm failed to disclose.

"Assuming there was a violation of ERISA, our allegation would be (David J. Greene) failed to disclose that," explained Macmillan's Ms. Chell.

The basis of Macmillan's suit, is that the investment firm "did not meet (filing) requirements" by filing only the 13-G shortened reporting with the Securities and Exchange Commission, Ms. Chell said. Instead, a 13-D, detailing its intent was in order initially, she charged.

"In its Schedule 13-Gs, Greene repeatedly disclaimed any intention to influence or affect control of Macmillan, but stated that the purchases were made 'in the ordinary course of its business.' These statements were materially false," the suit charges.

Securities law requires an investor to make a 13-D filing upon acquiring more than 5% of a company's outstanding stock. However, because investment firms make passive investments on behalf of a group of clients, they often file an abbreviated 13-G instead.

David J. Greene made a 13-D filing Feb. 4 for holding 11.32% of the shares. The suit, however, charges it should have done so initially so its intentions could have been detailed immediately.

Mr. Greene said the firm filed the 13-D in Februarv because Macmillan's stock price, at $24 per share, was approaching the target sale price the firm had set when it made the investment.

In its February filing, the firm stated it might "contact one or more investment banking firms in an attempt to secure a purchase for those shares who may or may not seek to obtain control of (Macmillan), to make a tender offer for additional shares, or to merge with (Macmillan)."

Mr. Greene explained the firm stated this because "under the law, you have to keep all your options open." He asserted the firm never had an intent to aid a takeover.

Mr. Greene said although the firm sold all the shares owned by clients, some of the partners still owned some shares.

It is not known how widespread the practice is of investment advisory principals investing for themselves along with clients.

However, principals at two other investment firms said buying similar stock holdings for themselves and clients creates at least the appearance of conflict of interest. Both firms said their internal rules prohibit such actions. ■

FASB . . .

Continued from page 2
able to get tax credit for.

He also suggested the guidelines would force companies to amortize their liabilities for slightly more than seven years rather than the current actuarial methods, which advocate 10-, 20- or 30-year funding.

Companies also might be forced to use interest rate assumptions of 11%, 12% or even 14% so their assets and balance sheets would balance, he said.

Mr. Lucas at first would not comment on how the final FASB regulations on interest-rate assumption would look.

But after speculation by Mr. Curtis, Mr. Lucas went on to say that he would be surprised if the regulations did specify an interest rate or advocate using a standard such as a rate set by the Pension Benefit Guaranty Corp. ■

Mr. Willis leads APPWP

WASHINGTON—For the first time in the 15 years of the Association of Private Pension and Welfare Plans, a corporate financial officer will head the benefits lobbying group.

Raymond L. Willis, assistant treasurer for United Technologies Corp., Hartford, Conn., has taken the role of chairman. He succeeds Douglas Stegner, chairman and chief executive officer of Meidinger Inc., a benefits consulting firm based in Louisville, Ky.

The election of Mr. Willis, who handles benefits management and is also responsible for fixed-income and real estate investments for United Technologies' $3.7 billion retirement plans, reflects the growing importance of issues in Washington that face employers.

Legislation affecting benefits is "so significant for our capital markets, the health of the U.S. economy and most importantly for the retirement security of millions of Americans," Mr. Willis said.

The group will focus on taxation of employee benefits, criticizing Congress for looking for "short-term revenue gains" at the expense of the private retirement system.

But there also is growing interest in investment issues in the APPWP. For the first time, the lobbying group has set up a panel of 20 members to develop positions on social investing. And the organization already opposes any efforts to "restrict or direct investments for 'divergent' purposes." ■

Pension funds used . . .

Continued from preceding page
"It's like some kind of contagious disease, and that is very troublesome," Mr. Gordon said. He noted exemptions granted by the Labor Department in the area of prohibited transactions "show the continuous employment of these pension fund resources as if they were simply adjuncts of the corporation . . . I think this shows how horrific the results would have been" without the prohibited transaction rule, he said.

Some of those interviewed, including Ms. Pollack and Mr. Salisbury, believe the use of pension assets by the corporation is isolated, rather than part of a growing trend. The cases cited in the accompanying chart are the exception, not the rule, to common practice, he said.

Others disagree strongly.

"I think they're going to be around. As situations change, the tactics will change now that corporations understand there is this huge mass of assets. It's a temptation," commented Mr. Lanoff.

Mr. Rotenberg said he believes almost every major corporation has considered contributing stocks or bonds in lieu of cash. "I think it's snowballing; it's going to be a continuing trend." ■

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Direct debt sale nets fee savings

By Pavan Sahgal

PHILADELPHIA — CIGNA Corp. is saving 12.5 basis points on dealer fees alone by selling commercial paper directly to buyers.

Its total savings since it started selling its own paper in May add up to around 30 basis points.

Corporate finance

Some of the savings are because CIGNA can offer securities of shorter maturities than customarily traded by dealers.

"As our investor base grows, we think we may be able to knock a few more points off there," said William J. Lucky, director of corporate finance.

The move was possible because of computerized back-office operations and the existence of a ready institutional clientele — a situation that is making it easier for other large corporations to sell directly as well.

CIGNA hopes to realize even more savings with another revolutionary move it is considering — in-house electronic banking to pay off its maturing debt.

It plans to generate automated clearing house messages on its own terminals along with the customary maturity letters informing its bankers to pay off the debt on the due date. The move is expected to cost the insurance and financial services company 15 cents per transaction, vs. the $10 to $15 wire charge it normally pays on funds transfers.

SEC clarifies underwriter question in direct buys of issues by institutions; page 2.

Because such innovative moves are unlikely to be made by smaller companies or ones that do not have a constant need

Continued on page 50

Wells Fargo's new twist

Stock index futures used on index fund investment

By Kimberly Blanton

MINNEAPOLIS — Wells Fargo Investment Advisors is buying and selling stock index futures for General Mills as an arbitrage on its investment in Wells Fargo's pooled index fund.

In an innovative twist on index fund management, Wells Fargo is purchasing Standard & Poor's 500 futures contracts when they are priced below the market index.

Otherwise, General Mills will ride the market in the S&P 500 passive index fund investment, a portfolio of stocks weighted to track that market's return.

A stock index future is a contract to buy or sell the stock market index for a cash value reflecting the level of the index. The General Mills strategy employs the S&P 500 contract traded at the Chicago Mercantile Exchange, which is priced at $500 per index point.

Although the stock index future roughly follows the market as a whole, price aberrations provide arbitrage opportunities between the contracts and the underlying stocks.

This arbitrage strategy marks General Mills' first use of any future in its $400 million pension fund, although commodity futures long have been used on the corporate side in hedging grain purchases, according to Judy Mares, director of benefit finance. Management's familiarity with futures, "built in over the years," cleared the way for approval of the pension fund's use of futures, she said.

General Mills solicited Wells Fargo, which was conducting its own research on stock index futures, to manage its account.

"We were following along the same paths somewhat independently," Ms. Mares said. "This enabled us to get a real fast kickoff" in working together on devising the strategy, she commented.

Although Wells Fargo is solely arbitraging in General Mills' account, Ms. Mares said unlimited strategies exist — including hedging and short-term investment in a rising stock market — and might be employed later in General Mills' account.

General Mills' investment reflects a growing interest — if not dollar commitment — in the new stock index contract by tax-exempt investors.

Others, including the pension funds of Westinghouse Electric Corp. and Exxon Corp., and Harvard University's endowment, have tried these futures in a vari-

Continued on page 51

Terminations misleading on funding status of benefit plans

By Nancy Webman

DALLAS — The recent rash of plan terminations in which excess assets are put to use by the corporation might be painting an inaccurate picture of the funding status of corporate pension funds, according to pension experts.

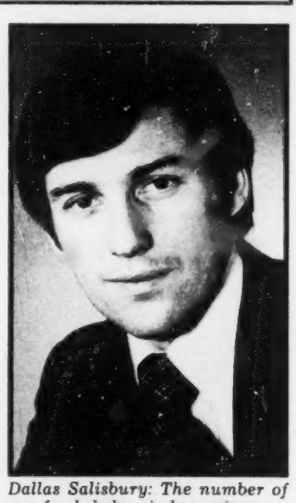
More than a dozen times in the past year or so, sponsors have terminated their plans, using the excess assets for some corporate finance purpose.

The reversions have given the appearance that many pension plans now are fully funded — in fact, overfunded — one of the prime objects of the Employee Retirement Income Security Act.

Interviews with consultants, actuaries and others, however, indicate that is far from the case.

"In the universe of pension plans, less than 5% are overfunded on the regular funding method," said Bob Berin, managing director and chief actuary of William Mercer in New York.

Dallas Salisbury, executive director of the Employee Benefits Research Institute in Washington, D.C., believes the number of overfunded plans actually is decreasing, the result of a "deliberate business decision, not a human resources decision."



Dallas Salisbury: The number of overfunded plans is decreasing.

"The average person, or even a corporate financial officer who doesn't know much about pensions but is interested in the bottom line, reads or hears about sponsors taking all these excess assets out and thinks, 'Boy, these plans all have

Continued on page 49

Fund's assets in limbo, as firms bid for a share

By Steve Hemmerick

SACRAMENTO — Some 29 investment advisers have offered to manage portions of the $10 billion in assets held by the California State Teachers' Retirement System.

But the investment committee chairman of the fund, Stephen Gavin, said a quick turnover of the assets to outside managers wouldn't be prudent.

The fund sent telegrams in June to 38 managers asking for suggestions on management when a political deadlock in Sacramento threatened to leave the fund without management on July 1 (*Pensions & Investment Age*, June 13).

On that date a year-old law takes effect separating the teachers' assets from the in-house management of its sister fund, the $18.7 billion California Public Employees' Retirement System.

The deadlock over who will manage the assets, however, appears to be continuing right up until the deadline.

Mr. Gavin has been seeking an "extension," keeping the teachers' assets managed by the public employees' in-house staff, saying he has had "good results" with them.

But a major political power on pension issues in Sacramento, Assemblyman Lou Papan, said that the public employees' fund "is in no position to handle its own assets."

Mr. Papan said the public employees' investment staff was effectively crippled with the departure of Mel Petersen, its former chief investment officer, who left state employment last March after a short stint as the new chief investment officer for the teachers' system.

Mr. Petersen was effectively managing $27 billion in state money, but getting paid $52,000 a year. In a reform effort, Mr. Papan tried to get the chief investment officer's salary raised to $95,000, raises for other personnel and money for additional requested employees.

But according to state investment officials, an appointee of newly elected Gov. George Deukmejian, Shirley Chilton, would permit only an increase to $63,500 for the top salary. Ms. Chilton couldn't be reached for comment. A press spokesman in the governor's office said he didn't know enough about the subject to outline the governor's position.

According to Mr. Papan, the governor is being given bad advice from Ms. Chilton, and Mr. Papan said he may speak out against Ms. Chilton at her upcoming confirmation hearing for the head of the state consumer service agency.

However, some observers pre-

Continued on page 53

Late news

Fiduciary selected

PEORIA, Ill. — Security Pacific Investment Managers Inc. has been named interim fiduciary for Keystone Consolidated Industries' deferred incentive trust. The action stems from lawsuits filed against Texas businessman Harold Simmons. Keystone is one of several companies Mr. Simmons controls, and he has investment discretion over the trust.

Under the agreement, he will share with Security Pacific investment discretion over Amalgamated Sugar Co. stock held by the trust, a Labor Department spokesman said.

The department and Jefferson Trust and Savings Bank of Peoria, custodian for the Keystone plan, have filed suits against Mr. Simmons that will be heard jointly in U.S. District Court here. Both allege Mr. Simmons imprudently used pension assets over which he was trustee or had investment discretion to gain controlling interests in certain companies.

A third fiduciary will later be named for the trust, the spokesman said.

Two seek termination

DALLAS — Two more companies, including one that has a

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